

It is the position of the Department that a sale of debtor assets conducted under the auspices of a bankruptcy court is not subject to the bulk sales reporting requirements of the Retailers' Occupation Tax Act. See 35 ILCS 120/5j. (This is a GIL).

March 30, 2001

Dear Xxxxx:

This letter is in response to your letter dated March 5, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We represent COMPANY which is purchasing substantially all of the assets of CORPORATION. CORPORATION does business in Illinois and recently filed for relief under Chapter 11 of the United States Code, 11 U.S.C. §§ 101 et seq. in the U.S. Bankruptcy Court for the Northern District of Illinois. In anticipation of closing the acquisition, on February 28, 2001 we requested a Bulk Sales Stop Order from the Illinois Department of Revenue. However we were advised by PERSON of the Department's Chicago office that the Department's position is that there is no need for a stop order when purchasing assets out of bankruptcy. He referred to January 22, 1986 letter ruling, no. 86009D.

While I welcomed PERSON'S advice, I read the letter ruling and discovered that it addresses judicial and non-judicial foreclosure sales, not sales out of a bankruptcy. Although the reasoning should be the same, I called your office to confirm the Department's position.

On Friday, March 2, I spoke with PERSON2. PERSON2 confirmed PERSON's advice and assured me that a Bulk Sales Stop Order was not necessary in our situation. He suggested that I could obtain a letter confirming the Department's position on this matter if I submitted a written request. Because the transaction may close prior to expiration of the 10-day period, I decided to make this request for a letter from the Department. Please confirm that a purchaser of assets from an entity in bankruptcy is not liable for the debtor's unpaid tax liability as otherwise provided in the Illinois Income Tax Act and Retailer's Occupation Tax Act, and therefore does not need to request a Bulk Sales Stop Order.

I would appreciate a response, if possible, by Wednesday, March 7, 2001. Thank you for your cooperation.

Successor liability provisions in the Illinois Retailers' Occupation Tax are found at 86 Ill. Adm. Code 130.1701, a copy of which is enclosed. The purpose of the provisions is to maximize the collection of delinquent taxes from businesses that might otherwise liquidate assets and disappear.

This regulation states that:

"If any taxpayer, outside the usual course of his business, sells or transfers the major part of any one or more of

- (1) the stock of goods which he is engaged in the business of selling, or
- (2) the furniture or fixtures, or
- (3) the machinery and equipment,
- (4) the real property of any business that is subject to the provisions of the Act, the purchaser or transferee of such assets shall, no later than 10 days after the sale or transfer, file a notice of sale or transfer of business assets with the Chicago office of the Department...."

These are the circumstances under which a seller must give notice of the sale to the Department pursuant to the Retailers' Occupation Tax Act. To the extent that the taxpayer is a retailer, he will have to comply with requirements under the Retailers' Occupation Tax Act. Also, this language means over 50% of the assets in any of the above categories.

Special procedures exist for the successor to minimize exposure from the predecessor. These procedures are described at subparts (a)(4) and (b) of 86 Ill. Adm. Code 130.1701. The notice of sale/purchase of business assets must be reported to the Department on Form NUC-542A no later than 10 days after the sale or transfer. This form must be filed at our Chicago office.

However, it is the position of the Department that a sale of debtor assets conducted under the auspices of a bankruptcy court is not subject to the bulk sales reporting requirements of the Retailers' Occupation Tax Act. We believe the Bankruptcy Code preempts the bulk sales provisions of the Retailers' Occupation Tax Act.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz  
Associate Counsel

KWB:msk  
Enc.